

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

BRUSHY BROOK DEVELOPMENT COMPANY, LLC: BK No. 05-13009
Alleged Debtor Chapter 7 Inv.

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ORDER DENYING ALLEGED DEBTOR'S MOTION
FOR PARTIAL SUMMARY JUDGMENT

APPEARANCES:

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BEFORE ARTHUR N. VOTOLATO, United States Bankruptcy Judge

BK No. 05-13009

Heard on January 25, 2006, on the sole legal question of whether an insider can be a petitioning creditor under 11 U.S.C. § 303(b)(2) when the alleged debtor has fewer than twelve creditors. For the reasons argued by the Petitioning Creditors in their brief, Doc. #80, and made on the record during oral argument, which I adopt and incorporate herein by reference, I answer the question in the affirmative, and rule that an insider may be a petitioning creditor when the alleged debtor has fewer than twelve creditors.¹ Accordingly, the Alleged Debtor's "Motion for Partial Summary Judgment" is DENIED.

Dated at Providence, Rhode Island this 26th day of January, 2006.



Arthur N. Votolato
U.S. Bankruptcy Judge

Entered on docket: 1/26/2006

¹ In addition to our ruling based on the petitioning creditors' arguments, I also disagree with the Alleged Debtor's interpretation of the statute, that Congress intended that the transferee of an avoidable transfer be excluded as a petitioning creditor in cases where there are fewer than twelve creditors. It would be difficult to imagine an instance where such a transferee would ever aspire to being a petitioning creditor in an involuntary bankruptcy, and therefore, conclude that Congress did not intend to provide the exclusion proposed by the Alleged Debtor.